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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL EDWARD WALKER II,

Defendant and Appellant.

F077687

(Super. Ct. No. 1091957)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Stanislaus County. Scott T. Steffen, Judge.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Detjen, J. and Peña, J.

Appellant Michael Edward Walker II appeals from the trial court's denial of his motion for modification of sentence. Appellate counsel filed a brief that summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) However, we conclude that the court's orders denying relief are not appealable orders and we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In 2005, Walker was a member of a criminal street gang in Modesto. On May 10, 2005, he fired three shots from a car at a man who was in an area claimed by Walker's gang, hitting the man in the back and another man in the arm. As Walker drove through an intersection, he fired several more shots, striking the driver of a car in the left arm, left shin and right foot.

During an ensuing police chase, Walker waved a handgun out of the window and pointed it at the pursuing officers. After the officers stopped Walker's car by ramming into it, Walker struggled with the officers, but was eventually subdued with a Taser and a wrap device.

On October 18, 2005, a jury convicted Walker on two counts of attempted murder (Pen. Code, §§ 664/187),¹ five counts of assault with a firearm (§ 245, subs. (a)(2) & (b)), two counts of discharging a firearm at an occupied motor vehicle (§ 246), one count of brandishing a firearm at a peace officer (§ 417, subd. (c)), one count of forcibly resisting arrest (§ 69), one count of being an ex-felon in possession of a firearm (former § 12021, subd. (a)) and one count of evading arrest (Veh. Code, § 2800.2, subd. (a)). A criminal gang enhancement (§ 186.22, subd. (b)(1)) was found true in connection with each count and various offense-related enhancement allegations were found true in connection with various counts. (§§ 12022.5, 12022.53, subs. (b)(d), 12022.7, subd. (a).) Walker admitted having one prior strike (§ 667, subs. (b)–(i)) and two prior

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

serious felony convictions (§§ 667, subd. (a), 667.5, subd. (b), 1197.2, subd. (c)). He was sentenced to an aggregate determinate term of 57 years plus two consecutive indeterminate terms of 25 years to life.

Following a timely appeal, this court affirmed the judgment in *People v. Walker* (May 20, 2009, F052529 [nonpub. opn.]).

On December 30, 2015, Walker filed a motion requesting relief from judgment, which the trial court construed as a petition for writ of habeas corpus.

On August 26, 2016, the court granted the petition in part, stayed some of the enhancements, and reduced Walker's sentence to a determinate term of 42 years plus two consecutive indeterminate sentences of 25 years to life.

Effective January 21, 2018, section 12022.53, subdivision (h) was amended to allow trial courts to strike or dismiss firearm enhancements imposed pursuant to section 12022.53 (Stats. 2017, ch. 682, § 2). (Senate Bill No. 620 (2017–2018 Reg. Sess.).)

On February 26, 2018, Walker filed an ex parte motion for modification of a sentence asserting various grounds, including that he was entitled to have the trial court consider striking his firearm enhancement pursuant to the amendment of section 12022.53.

On April 19, 2018, the trial court issued an order granting the motion based on the amendment to section 12022.53 and denied it on all other grounds. The order also noted that to effectuate this order, the court would be issuing a separate order.

On April 23, 2018, the court appointed counsel to represent Walker.

On May 25, 2018, based on further research the court concluded that Walker was not eligible for resentencing pursuant to the amendment of section 12022.53 and it reversed itself and denied the motion on the remaining ground.

On June 14, 2018, Walker filed an appeal.

DISCUSSION

“ ‘[G]enerally a trial court lacks jurisdiction to resentence a criminal defendant after execution of sentence has begun. [Citation.]’ [Citations.] There are few exceptions to the rule.” (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1204.) The only possible exception cited by Walker in his motion to modify sentence was the 2017 amendment to section 12022.53 noted above.

“On October 11, 2017, the Governor signed Senate Bill No. 620, which became effective on January 1, 2018. [Citation.] Senate Bill No. 620 amended section 12022.53, subdivision (h) to now provide: ‘The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.’ ” (*People v. Chavez* (2018) 22 Cal.App.5th 663, 708.) The amendment to section 12022.53, subdivision (h) applies retroactively to all nonfinal judgments (*In re Estrada* (1965) 63 Cal.2d 740, 746) and, by its own terms, “to any resentencing that may occur pursuant to any other law” (§ 12022.53, subd. (h)).

Walker was not eligible for resentencing pursuant to the 2017 amendment of section 12022.53, subdivision (h) because his case was already final when Senate Bill No. 620 became effective on January 1, 2018. Therefore, Walker did not qualify for resentencing pursuant to this amendment.

Moreover, “ ‘[i]t is settled that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute.’ ” (*People v. Totari* (2002) 28 Cal.4th 876, 881.) “[A] criminal appeal by the defendant may be taken only from ‘a final judgment of conviction’ [citations] or from ‘any order made after judgment, affecting the substantial rights’ of the party.” (*People v. Gallardo* (2000) 77 Cal.App.4th 971, 980.)

The trial court's orders denying Walker's motion did not involve a final judgment of conviction and they did not affect his substantial rights because the court lacked jurisdiction to modify his sentence. (*People v. Turrin, supra*, 176 Cal.App.4th at p. 1208.) Therefore, the court's orders denying Walker's ex parte motion for modification of sentence are not appealable orders and we will dismiss the appeal. (See, e.g., *ibid.*; *People v. Mendez* (2012) 209 Cal.App.4th 32, 34; *People v. Chlad* (1992) 6 Cal.App.4th 1719, 1725–1726.)

DISPOSITION

The appeal is dismissed.